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April 21, 2006

Commonwealth Edison Company ("ComEd") submits these comments in response to Staff's April 5, 2005, Notice of Workshop Process ("Notice").

I. The Definition of "Retail Competition"

In its Notice, Staff proffered the following in response to the Commission's call for a "working definition of retail competition, with particular focus on residential and small commercial customers."

Retail Competition: The ability of retail electric customers to choose whether to purchase their electricity supply from either the local electric utility or from an alternative retail electric supplier. The amount of competitive retail activity is maximized when all identified barriers to wholesale and retail competition have been eliminated.

In response to Staff's request for comments, ComEd has reviewed Staff's definition and offers the following preliminary comments on Staff's proposed definition of "retail competition" and looks forward to discussing this concept further with the workshop participants.

- In general, ComEd believes that a relatively simple and basic definition of "retail competition," is appropriate in light of the stated purposes of this workshop process:

The Workshop will have two phases. The first phase of the Workshop will focus on developing a working definition of retail competition, with particular focus on residential and small commercial customers. At the conclusion of that phase, within two months, Staff should report the findings of the workshop to the Commission. Upon the Commission's acceptance of a definition for retail competition, the second phase of the Workshops shall begin to determine the most appropriate way to reach the desired outcome.

(Docket No. 05-0159, Order at 154)

Section 16-101A(b) of the Public Utilities Act ("PUA") (220 ILCS 5/16-101A(b)) states: "Competition in the electric services market may create opportunities for

new products and services for customers and lower costs for users of electricity.” Considering that the purpose of the definition we are endeavoring to craft is to “determine the most appropriate way to reach the desired outcome” (i.e., retail competition, particularly for residential and small commercial customers) as part of the second phase of this workshop process, creating an environment that advances the opportunities for new products and services and lower costs for customers, particularly in the residential and small commercial markets, should be the objective. Indeed, considerable time and effort could be wasted debating the merits and economic theory supporting a more elaborate and detailed definition. In fact, Section 16-101A(d) of the PUA (220 ILCS 5/16-101A(d)), charges the Commission simply with promoting an “effectively competitive electricity market that operates efficiently and is equitable to all consumers.” (Emphasis added.) Therefore, a simple definition that can serve as the focal point for the second phase will lead to a more effective workshop process.¹

- Staff’s proposed definition does not appear to emphasize or draw any particular distinctions concerning competition for “residential and small commercial customers” (vis-à-vis competition for larger customers). To the extent this lack of emphasis or distinction was intentional, ComEd concurs with Staff’s approach in this respect. While there are arguably unique issues and circumstances to be considered as part of any inquiry into how retail competition and its associated benefits can be achieved in the residential and small commercial markets, such issues and circumstances need not be reflected in the working definition of what constitutes retail competition. Rather they should be reflected in the list of specific topics for consideration during the second phase of this workshop process.
- Although most Illinois electric utilities do not compete for customers located in other utilities’ service territories, the first sentence of the definition should not be limited to “alternative retail electric suppliers” (or “ARES”), as that term is defined in Section 16-102 of the Public Utilities Act. Rather, a broader term, which encompasses both ARES and other Illinois electric utilities, such as “retail electric supplier” (or “RES”), should be employed.
- The first sentence of Staff’s proposed definition (“The ability of retail electric customers to choose whether to purchase their electricity supply from either the local electric utility or from a [retail electric supplier]”) is not unreasonable as a

¹ While there are a definition of “competitive service” and standards for declaring a service “competitive” already embedded in the PUA (see 220 ILCS 5/16-102, 16-113), these terms are used in a more specific statutory context that ComEd does not believe is the focus of these workshops. Nevertheless, ComEd does not by these comments waive any legal arguments or positions with respect to such provisions.

starting point, but risks overlooking certain important considerations. Specifically, ComEd believes that, in a market subject to partial (i.e., utility) rate regulation, as the Illinois electric service market is, and for the purposes of this workshop, special emphasis should be placed on the exposure of customers to efficient price and non-price signals – not the mere “ability ... to choose.” Indeed, during the mandatory transition period, the legal “ability” for customers to choose was clearly present, but for many customers, the price signals sent by the mandatory rate freeze (as well as the mandatory rate reductions for residential customers) was not conducive to creating an environment in which such “ability” could be exercised. Looking forward to the post-transition period marketplace, it is critical that the focus be placed on the price and non-price signals presented to residential and small commercial customers in the retail marketplace and, indirectly, the ramifications of any distortions of such signals. Furthermore, the phrase “electricity supply” focuses the definition too narrowly on the core supply aspect, ignoring the impact of and the competitive influences that may occur through the availability of substitute or complimentary services and products.

- The second sentence in this definition (i.e., “The amount of competitive retail activity is maximized when all identified barriers to wholesale and retail competition have been eliminated.”) is really not a definition. Rather, it is an objective – one that is cast in an unnecessarily negative light. The phrase “barriers to ... competition” is highly subjective, will likely hold different meanings and connotations for the various workshop participants. Focusing discussion on “barriers” will likely lead to significant (and not necessarily productive) debate during the second phase of the workshop process over what constitutes a “barrier.” Therefore, ComEd believes it would be more productive to focus on any specific measures proposed by workshop participants to facilitate or promote competition, consistent with the provision of proper market signals, as noted above, as specific “topics” during the second phase of the workshop process, as opposed to attempting to incorporate them in an overly general fashion in the definition.
- Also concerning the second sentence in this definition, ComEd notes that the Commission’s ability to address “wholesale” competition is limited. Therefore, these workshops should focus on matters within the direct and express jurisdiction of the Commission (i.e., the retail market).

In light of the foregoing comments, ComEd offers the following definition of “retail competition” for consideration:

Retail Competition: The exposure and response of retail electric customers to reasonably efficient price and/or non-price signals associated with services offered by

utilities, retail electric suppliers ("RESs") or other sources of substitute or complementary products or services.

II. Discussion Topics.

Staff's Notice also requests suggestions for topics to be addressed in "future workshops" (which presumably is a reference to the "second phase" of the workshop process contemplated by the Commission's Order in Docket No. 05-0159) and how such topics should be addressed. ComEd offers the additional following topics and processes for consideration:

- **Findings of the Post-2006 Workshop Process:** The workshop process should avoid duplicating the successful efforts of the ICC's Post-2006 Workshop process. Therefore, as a starting point, this workshop process should begin by requesting that the workshop participants review the consensus items and other findings identified in the 2004 final report of the Competitive Issues Working Group and the other working groups and confirm their positions and/or identify any areas in which further consideration may be necessary. This can be accomplished through written comments and pursued further as necessary.
- **Experiences in Other States:** The workshop process should draw upon the experience in other states with retail competition in the small commercial and residential markets. A conference to which experts from select restructured states could be invited to speak would seem to be the most efficient means of gathering and disseminating such information.
- **Previously Raised Topics:** There were certain issues that were raised during the ComEd rate case (Docket No. 05-0597), which pertain directly to competition in the small commercial and residential markets and which ComEd suggested may be more appropriate to address as part of this workshop process. To the extent that these issues are considered further as part of this workshop process, ComEd proposes the formation of separate workshop groups to explore the specific legal and policy issues surrounding these topics respectively.
- **Cost Recovery & Cost Effectiveness:** The recovery and allocation of costs associated with any proposed measure (or "topic") aimed at advancing competition and requiring utility implementation should be included as part of the discussion of any such measures during the second phase of the workshop process. Similarly, the cost effectiveness and the expected benefits of any such measures also should be considered. Ultimately, efficient competition (i.e., that which maximizes societal benefits) is advanced by a regulatory environment in which only cost

effective and beneficial measures are undertaken; the delivery companies implementing such measures are made financially whole; and customers are provided with price signals that are reflective of cost.

III. Workshop Distribution List

ComEd requests that the following be added to the e-mail distribution list that Staff is developing for the workshop process:

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